IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

Crl.MC.No. 4057 of 2006()

CC.263/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MATTANNUR
CRIME NO.2/05 OF MATTANNUR POLICE STATION, MATTANNUR.

.....

PETITIONER:

C.NAZER, NASSARUDHEEN, S/O.ASSAINAR,
RESIDING AT MUNEERA MANZIL, MARUTHAI-MATTANNUR.

BY ADV. SRI.C.K.SREEJITH

RESPONDENTS:

---

1. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. C.ANWAR, S/O.ABU, PUTHIYAPURAYIL, CHAVASSERY AMSOM, ULIYIL DESOM, NADUVANADU, VALORA.

3. S.H.O. MATTANNUR, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.4057 OF 2006

Dated this the 18th day of December, 2006.

ORDER

The petitioner is the 1st accused in a prosecution under Section 379 I.P.C. The crux of the allegations against the petitioner is that he committed theft of a vehicle belonging to the defacto complainant/the 2nd respondent herein. This offence, he allegedly was committed along with his brother, the 2nd accused. Crime was registered. The vehicle was seized. It was released to the interim custody of the petitioner himself. After completing the investigation, final report has been filed against accused 1 & 2 alleging that they have committed the offence punishable under Section 379 read with 34 I.P.C.

2. The petitioner prays that the proceedings against him may be quashed by invoking the powers under Section 482 Cr.P.C. Alternatively he prays that directions may be issued to the learned Magistrate to consider the plea of the petitioner for discharge.

3. Having considered all the relevant inputs, I am certainly of the opinion that the petitioner must seek discharge before the court which has already taken cognizance. I shall

carefully avoid any detailed discussion on merits about the acceptability of the contentions. Suffice it to say that I am satisfied, that there are no circumstances justifying the invocation of the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C. The petitioner does not actually require any permission of this Court to claim discharge under Section 239 Cr.P.C. He must at the appropriate stage inform the court below that he wants to argue for discharge. When such request is made, the learned Magistrate must certainly consider his plea of discharge under Section 239 Cr.P.C, before the court proceeds to take a decision on the question of framing charge. The fact that there was interim release of the vehicle to the petitioner or that there has been a subsequent transfer of the vehicle from the name of the 1st respondent to the 2nd respondent, are not at any rate, sufficient to justify the invocation of the jurisdiction under Section 482 Cr.P.C, I am satisfied.

4. In the result, this Crl.M.C is, dismissed. But with the very specific observation that it shall be open to the petitioner to claim discharge under Section 239 Cr.P.C before the learned Magistrate. When such a plea is raised, the learned Magistrate must consider the same and pass appropriate orders under Section 239/240 Cr.P.C.

5. The petitioner has already entered appearance, submits the learned counsel for the petitioner. The learned counsel for the petitioner submits that the petitioner having already been enlarged on bail after cognizance has been taken, it is not necessary for the learned Magistrate now to insist on personal appearance of the petitioner. Such insistence would work out great prejudice and hardship to the petitioner, it is submitted.

6. If the petitioner has already been enlarged on bail, the petitioner can certainly apply for exemption from personal appearance. He can appear before the learned Magistrate and argue for discharge through his counsel. His personal presence need be insisted by the learned Magistrate only if the learned Magistrate takes a decision to frame charges. The question as to whether charges are liable to be framed or not, shall be decided by the learned Magistrate within a period of 60 days from the date on which a copy of this order is placed before the learned Magistrate by the counsel for the petitioner.

Hand over a copy of this order to the learned counsel for the petitioner for production before the learned Magistrate.

(R.BASANT, JUDGE)

rtr/